

## **Scotland Bill**

### **Inclusion Scotland**

#### **1. Introduction**

- 1.1. Inclusion Scotland is a network of disabled peoples' organisations (DPOs) and individual disabled people. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people's everyday lives and to encourage a wider understanding of those issues throughout Scotland.
- 1.2. In our evidence to the Committee on the Draft Legislative Clauses, Inclusion Scotland raised a number of concerns about the extent to which the draft clauses failed to implement in full the Smith Commission proposals, in particular on Welfare and Employability. We note that these concerns were reflected in the Committee's report.
- 1.3. Regrettably, the Scotland Bill has largely failed to address the concerns raised by ourselves or the Committee.
- 1.4. Inclusion Scotland, along with a number of Third Sector partners, will be seeking amendments to the Bill as it progresses through the UK Parliament. This Written Evidence highlights some of the areas where we are seeking amendments. The Committee may also wish to note the detailed written evidence Inclusion Scotland has submitted to the Welfare Reform Committee on The Future Delivery of Social Security in Scotland.

#### **2. Clause 19: Benefits for Disabled People**

- 2.1. The Smith Commission proposed that "Benefits for carers, disabled people and those who are ill, including Attendance Allowance, Carer's Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Allowance and Severe Disablement Allowance", should be devolved and that that the Scottish parliament will have "complete autonomy in determining the structure and value of the [devolved] benefits or any new benefits or services that might replace them".
- 2.2. Devolution of disability benefits in theory gives the Scottish Parliament the ability to design a new system of support for disabled people that is focussed on supporting independent living and meeting the additional costs of daily living faced by disabled people. Potentially, this could see better co-ordination of disability benefits, social care funding, self-directed support, the proposed Scottish Independent Living Fund and support for employment, education or training.
- 2.3. However, the Scotland Bill as presently drafted restricts the autonomy of the Scottish Parliament to create a new disability benefits system, based on empowering disabled people to lead active lives and promoting their right to independent living, by defining the new powers in terms of existing disability benefits and a restrictive definition of who is entitled to claim these benefits.

2.4. Inclusion Scotland would like to see the Scotland Bill amended to reflect the intention of the Smith Commission to give the Scottish Parliament complete autonomy over how the powers over disability benefits can be used.

### **3. Clause 19: Benefits for Carers**

3.1. The Smith Commission recommended the full devolution of Carer's Allowance. However the Scotland Bill sets out entitlement criteria which would restrict the payment of any future or reformed carers benefit to those who are "16 or over, not in full time education, and not gainfully employed".

3.2. Inclusion Scotland considers that it should be for the Scottish Parliament to determine who is eligible to claim carer's allowance. In particular, The Scotland Bill as presently drafted would unnecessarily restrict the Scottish Parliament's ability to develop future employability policy which might, for example, seek to support carers undertaking training or further education in order to return to employment.

### **4. Clause 21: Discretionary payments: top-up of reserved benefits**

4.1. The Smith Commission recommended "that the Scottish Parliament will also have new powers to make discretionary payments in any area of welfare without the need to obtain prior permission from DWP". This includes the power to top up reserved benefits, and Smith did not propose any conditions or limitations to this power.

4.2. Whilst the powers proposed in the Bill go further than those included in the Draft Clauses, there remains a restriction preventing the Scottish Parliament from providing financial assistance where "the requirement for it arises from reduction, non-payability or suspension of a reserved benefit as a result of an individual's conduct" (ie a sanction).

4.3. Inclusion Scotland believes that the current sanctions regime is unjust and impacts disproportionately and unfairly on disabled people, particularly those with a mental health issue. Clause 21 should therefore be amended to remove this restriction, which is inconsistent with the Smith Commission proposals.

### **5. Clause 22: Discretionary Housing Payments**

5.1. The Smith Commission proposed that the Scottish Parliament would have complete autonomy over Discretionary Housing Payments. However, the Scotland Bill restricts this autonomy by limiting eligibility to those in receipt of Housing benefit or Universal Credit.

5.2. One, presumably unintended, side-effect of the Under-Occupation Penalty (Bedroom Tax) is that there are some people with an underlying entitlement to Housing Benefit who then lose it because of the penalty imposed. These tenants would then be denied a DHP. Given that 80% of the Scottish Households affected by the Under Occupation Penalty contain a disabled person this restriction on eligibility to DHPs is bound to have a disproportionate impact on disabled tenants and carers.

- 5.3. The Scotland Bill will also prevent DHPs being paid where the need arises as a result of a benefit sanction. Again, as at 4.3 above, this will have a disproportionate effect on disabled people who have been unjustly sanctioned, and may lead to them losing their homes.
- 5.4. Inclusion Scotland believes Clause 22 should be amended to remove these restrictions and bring it in line with the Smith Commission proposals.

## **6. Clause 23: Discretionary Payments and Assistance**

- 6.1. Clause 23 will devolve the power to make discretionary payments to households with short term needs and also make grants to households who require assistance to establish or maintain a settled home. Similar powers having already been devolved to the Scottish Parliament through the Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2013.
- 6.2. Clause 23, as currently drafted, does not include “families under exceptional pressure” amongst those eligible for assistance. Whilst this group were eligible for assistance under the predecessor Social Fund arrangements and are currently eligible for community care grants from the interim Scottish Welfare Fund, some doubts arose during passage of the Welfare Funds (Scotland) Act as to whether it was competent to include “families under exception pressure” under the terms of the current Section 30 Order.
- 6.3. Inclusion Scotland believes that Clause 23 should be amended to include “families under exceptional pressure” to put this beyond doubt.
- 6.4. Inclusion Scotland also believes that Clause 23 should be amended to remove the restriction that would prevent the Scottish Welfare Fund making payments to those who have been sanctioned or failed to meet the conditions attached to a reserved benefit. These are new restrictions being placed on already devolved powers (as the Scottish Welfare Fund currently allows discretionary payments to those who have been sanctioned) and are not in line with the Smith Commission recommendations.

## **7. Clause 26: Employment support**

- 7.1. The Smith Commission proposes that “The Scottish Parliament will have all powers over support for unemployed people through the employment programmes currently contracted by DWP”.
- 7.2. Inclusion Scotland welcomes the new powers to assist disabled persons to select, obtain and retain employment contained in Clause 26. Latest figures show that the employment rate for disabled people in Scotland has fallen to 40.8%, compared to 74.4% for working age population as a whole<sup>1</sup>. The new powers present an opportunity to integrate support for employment with other support for disabled people to provide a comprehensive package to disabled

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/406369/labour-force-survey-disabled-people.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406369/labour-force-survey-disabled-people.pdf) and <http://www.gov.scot/Resource/0047/00471945.pdf>

people to assist into sustainable employment and close the inequality in the employment rate.

- 7.3. However, Inclusion Scotland believes that the present wording of Clause 26 places unnecessary restrictions on who can be assisted and for how long. For example it is known that one of the key groups to suffer consistent poverty are those who circulate in and out of low paid work. Such people need tailored interventions to increase their skills/qualifications and increase their chances of securing well-paid work. Yet the current wording would deny them support as only the long-term unemployed entering a programme for a minimum of one year could be assisted.
- 7.4. Inclusion Scotland would also like to see Clause 26 amended to include the Access to Work Scheme (AtW). Take-up of AtW in Scotland is low and it only supports a tiny proportion of working age disabled people (just over 2%) to access and maintain employment. AtW can help pay for practical support and adaptations to support disabled people to start work or to stay in work if they acquire an impairment, or if an existing condition deteriorates.

## **8. Clause 33: Tribunals**

- 8.1. In July 2013, the UK Government introduced fees of up to £950 for Employment Tribunal hearings, payable by applicants. This is in addition to a fee for issuing the claim, of up to £250. Disability discrimination applications are subject to the highest fees (that is the full £1200) because of their legal complexity and the likely length of hearings.
- 8.2. There has been a substantial drop in Employment Tribunal applications for disability discrimination since Tribunal fees were introduced. There was a 54% reduction in applications under disability discrimination (from 1801 to 818) after the introduction of the fees. The EHRC thinks that tribunal fees have had a disproportionate impact on the access to justice of disabled people breaching their UN Convention on the Rights of Disabled People (UNCRPD) rights.
- 8.3. The Smith Commission proposed that “All powers over the management and operation of all reserved tribunals (which includes administrative, judicial and legislative powers) will be devolved to the Scottish Parliament other than the Special Immigration Appeals Commission and the Proscribed Organisations Appeals Commission.”
- 8.4. Inclusion Scotland believes that access to justice is a fundamental Human Right, and we hope that the Scottish Parliament will be able to use the new powers to address the financial barriers caused by increased fees, However, we are concerned that Clause 33 proposes to transfer these powers tribunal by tribunal using Orders in Council, as this may allow the UK Government to delay transferring powers over Employment Appeals Tribunals, or restricting the freedom of the Scottish Parliament to set its own fee structure. This would be against the spirit of the Smith Commission.

## **9. Conclusion**

- 9.1. Inclusion Scotland remains concerned that the Scotland Bill as currently drafted does not implement the Smith Commission in full, particularly in the areas of Disability Benefits, Employability Schemes and Tribunals, and we will continue to work with partner organisations to seek amendments to The Scotland Bill as it progresses through the UK Parliament.